IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.6052 OF 2001

Shri Prakash Poonaji Bhatkar
Sales Tax Officer,
P.T.O. 45, Mazgaon
Mumbai - 10 and residing at
33/1782, Sukh Sadan Co-op. Housing
Society, Khar Nagar, Bandra (E)
Mumbai - 51 ... Petitioner

V/s.

1. The Government of Maharashtra
through the Secretary
Finance Department
Mantralaya, Mumbai

2. Sales Tax Commissioner Ors.
Mazgaon, Mumbai-10

3. Secretary/Chairman
Maharashtra Public Service Commission
having its office at Bank of
India Building, Fort, Mumbai ... Respondents

Mr.V.M. Tayade for Petitioner
Mr.S.R. Nargolkar, AGP, for Respondent Nos.1 to 3

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **FEBRUARY 4, 2005**

ORAL JUDGMENT (PER PALSHIKAR, J.):

. By this Petition, the Petitioner had challenged the order passed by the Maharashtra Administrative Tribunal rejecting the Original Application for grant of an additional chance to appear and pass departmental examination. The Tribunal has given cogent and valid reasons in paragraphs 5 and 6 of its order which read as

under:

> 5. It is evident from these rules that the Government servant promoted to the Post of Sales Tax Officer Class II has to pass the departmental examination within two years from the date of promotion. Additional chances can be granted provided they are not more than two. The applicant was evidently granted all the chances as provided under the rules including the chances to which he is entitled on account of being a backward class employee. He failed to pass the examination. Therefore, we do not find any infirmity in the order of reversion passed in pursuance of rule 4(c) of the examination rules.
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> 6. His contention that his representation should have been considered under rule 7 with regard to chance which he could not taken on account of illness is baseless and arises out of misreading of the rules. The rules emphasize on the period for passing the examination and not on the chance. Rule lays down that failure to appear in the examination when required or permitted to do so unless it is for reasons beyond the control of the incumbent will be treated as failure to pass the same. The decision of the Government shall be final. Admittedly even if the Government has not taken decision it cannot be presumed that the Government has accepted the position that he failed to appear for the examination for reasons beyond his control. Besides therefore, cannot consider granting of any additional chance to the applicant. We are fortified in our conclusion by earlier decision of the Tribunal cited by the respondents and enclosed as R-1.

2. In view of this specific finding recorded by the Tribunal, there is no error either of law or of jurisdiction committed by the Tribunal to require interference by this Court under Articles 226 or 227 of the Constitution of India. Hence, Petition rejected.